

AMENDED IN ASSEMBLY AUGUST 22, 2012

AMENDED IN ASSEMBLY AUGUST 13, 2012

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 11, 2012

AMENDED IN SENATE JANUARY 25, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 455

Introduced by Senator Pavley

February 16, 2011

An act to amend Section 4621 of, and to add ~~Section 4622.5~~ *Sections 4622.3 and 4622.4* to, the Public Resources Code, relating to forestry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 455, as amended, Pavley. Forestry: timberlands: conversion mitigation.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to, and approved by, the Department of Forestry and Fire Protection. A violation of the act is a crime. The act also requires a person who owns timberlands, which are to be devoted to uses other than the growing of timber, to file an application for conversion with the State Board of Forestry and Fire Protection *and requires the board to establish a system of graduated timberland conversion permit fees.*

This bill would require the permit fee to cover the costs of the department and the Department of Fish and Game with regard to reviewing the application and ensuring compliance with specified requirements imposed by the bill. The bill would prohibit the department board from approving an application for conversion of timberlands of 3 or more acres unless specific mitigation requirements are met. The the board makes specified findings regarding the mitigation of the conversion.

The bill would require all mitigation associated with these conversion projects to be on lands that secure the mitigation with a permanent conservation easement unless the reforestation requirement meets a minimum acreage ratio and would require an applicant for conversion to take specified actions with regard to the management of timberland and reforestation. The bill would provide an exception for a also require a county that adopts a timberland conversion and mitigation ordinance to demonstrate that it meets or exceeds the mitigation requirements specified requirements to petition the board. The bill would authorize require a timberland conversion permit applicant to contract enter into an agreement with the state, among others, board to implement mitigation activities the requirements of the bill. The bill would establish a continuously appropriated fund the Timberland Conversion Services Fund, to be administered by the Natural Resources Agency and would require that moneys received under a contract to mitigate a conversion of timberlands be deposited in the fund and expended for that purpose. The bill would also allow the department to collect a fee for permits applicable to the conversion of timberlands of 3 or more acres to cover its costs and the costs of the Department of Fish and Game in approving timberland conversion permits and ensuring that mitigation requirements are met board. The bill would continuously appropriate the money in the fund to the board to implement the bill, thereby making an appropriation.

The bill would impose a state-mandated local program by creating new crimes with regard to the requirements imposed by the bill upon a person that applies to convert timberland and by imposing new duties upon local agencies by requiring counties to enter into an agreement with the board and the applicant.

The bill would require the board to develop guidelines to assist in compliance with the requirements imposed by the bill and would require the guidelines to be submitted to the State Air Resources Board. The bill would exempt the development of these guidelines from the

requirements imposed upon the adoption of regulations. The bill would authorize the board to expend the money in the fund to develop those guidelines and would authorize the State Air Resources Board to expend certain fees deposited in the Air Pollution Control Fund, upon appropriation by the Legislature, to review the guidelines.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It is the intent of the Legislature to maintain California's
4 current acreage of timberlands in order to provide for the
5 environmental and watershed amenities of timberlands and to
6 maintain the economic productivity of those lands.

7 (b) It is also the intent of the Legislature to maintain *the*
8 *productivity of* California's timberlands to help achieve the state's
9 greenhouse gas reduction goals, *maintain healthy watersheds, and*
10 *maintain forest habitat.*

11 (c) It is further the intent of the Legislature that the impacts of
12 the conversion of timberlands to nonforest uses be mitigated in a
13 way that will create economic incentives for ~~other landowners to~~
14 ~~manage their lands to restore, maintain, and enhance management,~~
15 *restoration, and enhancement of timberland.*

16 (d) In mitigating the loss of timberland, it is the intent of the
17 Legislature that the mitigation actions include reforesting an area
18 at least as large as the conversion to ~~prevent~~ *mitigate* the continued
19 loss of timberland acreage. Additional actions may be required to
20 fully mitigate ~~the ecological and~~ climate impacts of the conversion.

1 SEC. 2. Section 4621 of the Public Resources Code is amended
2 to read:

3 4621. (a) Any person who owns timberlands, *as defined in*
4 *subdivision (f) of Section 51104 of the Government Code*, which
5 are to be devoted to uses other than the growing of timber, shall
6 file an application for conversion with the board. The board shall,
7 by regulation, prescribe the procedures for, form, and content of,
8 the application. An application for a timberland conversion permit
9 shall be accompanied by an application fee, payable to the
10 ~~department~~ board, in an amount determined by the board pursuant
11 to subdivision (b) *that is adequate to cover the department's costs*
12 *and the costs of the Department of Fish and Game for any review*
13 *of the application pursuant to subdivision (b) of Section 4622.3,*
14 *and to ensure compliance with mitigation and monitoring*
15 *requirements, as required by Sections 4622.3 and 4622.4.*

16 (b) The board shall establish, by regulation, a system of
17 graduated timberland conversion permit fees to finance the cost
18 of administering this article.

19 ~~(c) For permits applicable to the conversion of timberlands of~~
20 ~~three or more acres, the department may collect a fee, as necessary,~~
21 ~~to cover its costs and the costs of the Department of Fish and Game~~
22 ~~in approving these timberland conversion permits and ensuring~~
23 ~~that mitigation requirements occur and are maintained over time.~~

24 SEC. 3. Section 4622.3 is added to the Public Resources Code,
25 to read:

26 4622.3. (a) *The board shall not approve an application filed*
27 *pursuant to Section 4621 for a conversion of timberlands of three*
28 *or more acres unless the board finds all of the following:*

29 (1) *The environmental impacts of the conversion on wildlife,*
30 *habitat values, and forest type are mitigated as required by all*
31 *applicable laws.*

32 (2) *The mitigation occurs on nonfederal California timberlands*
33 *and, to the extent feasible, in proximity to the proposed conversion*
34 *and on land of similar forest type.*

35 (3) *Consistent with the greenhouse gas reduction principles*
36 *identified in subdivision (d) of Section 38562 of the Health and*
37 *Safety Code, the mitigation fully mitigates the loss of carbon in*
38 *above-ground and below-ground biomass and the loss of future*
39 *ongoing carbon sequestration.*

1 (4) *The reduction of greenhouse gas impacts specified in*
2 *paragraph (3) occurs over the same time period and is equivalent*
3 *to the greenhouse gas emissions and losses of above-ground and*
4 *below-ground biomass that result from the conversion.*

5 (b) *The board shall provide to the Department of Fish and Game*
6 *all of the following:*

7 (1) *A copy of the application for conversion subject to this*
8 *section.*

9 (2) *An opportunity to conduct a field review.*

10 (3) *An opportunity to provide comments regarding the*
11 *application to the board.*

12 SEC. 4. *Section 4622.4 is added to the Public Resources Code,*
13 *to read:*

14 4622.4. (a) *An application filed with the board for a conversion*
15 *of timberlands that is subject to Section 4622.3 shall obligate the*
16 *applicant to meet all of the following requirements:*

17 (1) *Except as provided in paragraph (2) and subparagraph (C)*
18 *of paragraph (3), all mitigation associated with the conversion*
19 *projects specified in the application shall be on lands that secure*
20 *the mitigation with a permanent conservation easement and shall*
21 *include, but are not limited to, the reforestation of a previously*
22 *forested area at a minimum acreage ratio of 1:1. The lands on*
23 *which mitigation occurs shall historically have been in forest cover*
24 *but shall not have been in forest cover for at least 10 years before*
25 *the date of the application.*

26 (2) *As an option to the applicant, the reforestation requirement*
27 *described in paragraph (1) may be met at a minimum acreage*
28 *ratio of 2:1 on land not subject to a conservation easement.*

29 (3) *To the extent that mitigation conducted pursuant to*
30 *paragraph (1) or (2) does not fully mitigate greenhouse gas*
31 *emissions and the loss of carbon in above-ground and*
32 *below-ground biomass and the loss of future ongoing carbon*
33 *sequestration caused by the conversion project, the applicant shall*
34 *undertake one, or a combination of, the following actions:*

35 (A) *Avoid the loss of carbon in above-ground and below-ground*
36 *biomass by preserving timberland at risk of conversion.*

37 (B) *Manage timberlands to sequester additional carbon in*
38 *above-ground and below-ground forest biomass.*

39 (C) *Contribute to, or conduct, additional reforestation or*
40 *afforestation activities.*

1 (4) Reforestation done to meet postharvest reforestation
2 requirements under this chapter shall not be used to satisfy the
3 requirements of this section.

4 (5) All mitigation shall be the responsibility of the timberland
5 conversion permit applicant.

6 (6) Unless an exception is approved by the board as part of the
7 environmental analysis of the conversion application, all actions
8 necessary to complete mitigation for greenhouse gas emissions
9 and loss of above-ground and below-ground biomass and the loss
10 of future ongoing carbon sequestration caused by the project shall
11 be completed within two years of the conversion to nonforest use
12 and in either of the following ways:

13 (A) Mitigation may be undertaken by the applicant if the board
14 finds that the mitigation will comply with this section and other
15 applicable law.

16 (B) Mitigation may be undertaken through contracts or other
17 agreements with the state or, if the board finds that the mitigation
18 will comply with this section and other applicable law, with third
19 parties that have expertise in managing timberlands, including
20 local conservation corps, resource conservation districts, nonprofit
21 organizations, or private landowners, if the contract or agreement
22 is provided to the board and contains terms specifically authorizing
23 the board to enforce any such contract or agreement.

24 (C) After the board develops appropriate guidelines pursuant
25 to subdivision (e), mitigation may be undertaken through direct
26 payment to the board in an amount that the department and the
27 Department of Fish and Game determine will satisfy the applicant's
28 mitigation responsibilities pursuant to this section.

29 (7) The applicant shall enter into an enforceable agreement
30 with the board to ensure that the mitigation is completed pursuant
31 to this section and other applicable law. The county shall be
32 included as a party to the agreement when changes in local land
33 use planning are required to implement the conversion or the
34 mitigation and may be included in other instances at the request
35 of the county, upon acceptance of a petition from the county to the
36 board.

37 (b) (1) The Timberland Conversion Services Fund is hereby
38 created in the State Treasury, to be administered by the board.

1 (2) *All moneys received by the board pursuant to the agreement*
2 *required by paragraph (7) of subdivision (a) shall be deposited in*
3 *the Timberland Conversion Services Fund by the board.*

4 (3) *Notwithstanding Section 13340 of the Government Code,*
5 *the moneys in the Timberland Conversion Services Fund are hereby*
6 *continuously appropriated to the board for purposes of this section,*
7 *including to mitigate the timberland conversion and for purposes*
8 *of subdivision (e).*

9 (c) *A conversion that complies with subdivision (g) of Section*
10 *4584 is exempt from this section.*

11 (d) (1) *Notwithstanding Section 4628, upon petition to the board*
12 *by a county and subject to concurrence by the board, a county that*
13 *adopts a timberland conversion and mitigation ordinance that*
14 *establishes the county as the lead agency for the timberland*
15 *conversion shall demonstrate that it meets or exceeds the standards*
16 *of this section, including responsibilities for monitoring and*
17 *enforcement.*

18 (2) *If a county is established as the lead agency for the*
19 *timberland conversion pursuant to paragraph (1), any payments*
20 *paid by the applicant pursuant to the agreement required to be*
21 *entered into pursuant to paragraph (7) of subdivision (a) shall be*
22 *paid to the county and not to the fund and shall be used by the*
23 *county to mitigate the conversion.*

24 (e) (1) *The board shall develop guidelines that are approved*
25 *at a public hearing to assist in compliance with this section. The*
26 *guidelines shall be submitted to the State Air Resources Board at*
27 *a public hearing and, to the extent feasible, shall be consistent*
28 *with an existing relevant greenhouse gas accounting method*
29 *developed by the State Air Resources Board. The board may expend*
30 *the funds in the Timberland Conversion Services Fund for purposes*
31 *of developing the guidelines and may expend the funds*
32 *appropriated by the Legislature from any appropriate source for*
33 *this purpose. The State Air Resources Board may expend the fees*
34 *deposited in the Air Pollution Control Fund pursuant to Section*
35 *38597 of the Health and Safety Code upon appropriation by*
36 *Legislature for purposes of this paragraph.*

37 (2) *The development of guidelines pursuant to this section is*
38 *not the adoption of regulations for purposes of, and shall be exempt*
39 *from, Chapter 3.5 (commencing with Section 11340) of Part 1 of*
40 *Division 3 of Title 2 of the Government Code.*

1 (f) *The requirements imposed by this section for the approval*
2 *of a timberland conversion permit are in addition to any other*
3 *requirements established by law or regulation.*

4 SEC. 5. *No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution for certain*
6 *costs that may be incurred by a local agency or school district*
7 *because, in that regard, this act creates a new crime or infraction,*
8 *eliminates a crime or infraction, or changes the penalty for a crime*
9 *or infraction, within the meaning of Section 17556 of the*
10 *Government Code, or changes the definition of a crime within the*
11 *meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 *However, if the Commission on State Mandates determines that*
14 *this act contains other costs mandated by the state, reimbursement*
15 *to local agencies and school districts for those costs shall be made*
16 *pursuant to Part 7 (commencing with Section 17500) of Division*
17 *4 of Title 2 of the Government Code.*

18 SEC. 3. ~~Section 4622.5 is added to the Public Resources Code,~~
19 ~~to read:~~

20 ~~4622.5. (a) An application for conversion of timberlands of~~
21 ~~three or more acres shall not be approved unless the department~~
22 ~~finds all of the following:~~

23 ~~(1) All of the environmental impacts of the conversion, including~~
24 ~~impacts on wildlife, habitat values, and forest type are fully~~
25 ~~mitigated. This determination shall be made with the approval of~~
26 ~~the Department of Fish and Game.~~

27 ~~(2) The mitigation occurs on California timberlands, is limited~~
28 ~~to the actions described in subdivisions (b) and (c), complies with~~
29 ~~the greenhouse gas reduction principles identified in subdivision~~
30 ~~(d) of Section 38562 of the Health and Safety Code, and is in~~
31 ~~accordance with guidance developed in consultation with the State~~
32 ~~Air Resources Board.~~

33 ~~(3) The mitigation pursuant to paragraph (1) shall fully mitigate~~
34 ~~the loss of carbon in above-ground and below-ground biomass and~~
35 ~~the loss of future ongoing carbon sequestration. The reduction of~~
36 ~~greenhouse gas impacts shall occur over the same time period as,~~
37 ~~and shall be equivalent to, the greenhouse gas emissions and losses~~
38 ~~of above-ground and below-ground biomass that result from the~~
39 ~~conversion.~~

1 ~~(4) The mitigation pursuant to paragraph (1) will be~~
2 ~~implemented as required under subdivision (e).~~

3 ~~(b) All mitigation associated with conversion projects shall be~~
4 ~~on lands that secure the mitigation with a permanent conservation~~
5 ~~easement and include, but not be limited to, the reforestation of a~~
6 ~~previously forested area at a minimum acreage ratio of one-to-one.~~
7 ~~The lands on which this mitigation occurs shall historically have~~
8 ~~been in forest cover but shall not have been in forest cover for at~~
9 ~~least 10 years.~~

10 ~~(c) To the extent the reforestation activity in subdivision (b)~~
11 ~~does not fully mitigate the loss of carbon in above-ground and~~
12 ~~below-ground biomass and the loss of future ongoing carbon~~
13 ~~sequestration caused by the conversion project, the applicant shall~~
14 ~~undertake one or a combination of the following actions:~~

15 ~~(1) Avoid the loss of carbon in above-ground and below-ground~~
16 ~~biomass by preserving timberland at risk of conversion.~~

17 ~~(2) Manage timberlands to sequester additional carbon in~~
18 ~~above-ground and below-ground forest biomass.~~

19 ~~(3) Additional reforestation activities.~~

20 ~~(d) All mitigation shall be the responsibility of the timberland~~
21 ~~conversion permit applicant.~~

22 ~~(e) All mitigation shall be completed within two years of the~~
23 ~~conversion to nonforest use and in either of the following ways:~~

24 ~~(1) The permit applicant may undertake the mitigation directly,~~
25 ~~if the department finds that the mitigation will comply with this~~
26 ~~section.~~

27 ~~(2) The permit applicant may undertake the mitigation through~~
28 ~~contracts or other agreements with the state, or if the department~~
29 ~~finds that the mitigation will comply with this section, with third~~
30 ~~parties that have expertise in managing timberlands, including~~
31 ~~local conservation corps, nonprofit organizations, or private~~
32 ~~landowners if the contract or agreement is provided to the~~
33 ~~department and contains terms specifically authorizing the~~
34 ~~department to enforce any such contract or agreement.~~

35 ~~(3) The department and the applicant shall enter into an~~
36 ~~enforceable agreement to ensure that the mitigation is completed,~~
37 ~~which shall include the county, at its request, and shall include the~~
38 ~~county when changes in local land use planning would be required~~
39 ~~to implement the conversion or mitigation.~~

1 ~~(f) (1) The Timberland Conversion Services Fund is hereby~~
2 ~~created in the State Treasury, to be administered by the Natural~~
3 ~~Resources Agency.~~

4 ~~(2) All moneys received by the agency pursuant to an agreement~~
5 ~~authorized under paragraph (2) of subdivision (e) shall be deposited~~
6 ~~in the fund and expended to mitigate the timberland conversion~~
7 ~~that is the subject of that agreement.~~

8 ~~(3) The moneys in the fund shall be continuously appropriated~~
9 ~~to the agency for purposes of this section.~~

10 ~~(g) Conversions that comply with subdivision (g) of Section~~
11 ~~4584 are exempt from this section.~~

12 ~~(h) The department may exempt from this section a county that~~
13 ~~adopts a timberland conversion and mitigation ordinance that it~~
14 ~~finds meets or exceeds the mitigation requirements of this section.~~

15 ~~(i) The department shall develop guidelines to assist in~~
16 ~~compliance with this section. Any guidelines shall be developed~~
17 ~~in consultation with and approved by the State Air Resources Board~~
18 ~~and, to the extent feasible, shall be consistent with an existing~~
19 ~~relevant greenhouse gas accounting method developed by the State~~
20 ~~Air Resources Board. The department may seek reimbursement~~
21 ~~of its costs from any appropriate source including the fund~~
22 ~~established in paragraph (1) of subdivision (f). The State Air~~
23 ~~Resources Board may seek reimbursement of its costs from the~~
24 ~~Air Pollution Control Fund established in Section 43015 of the~~
25 ~~Health and Safety Code.~~

26 ~~(j) The requirements imposed by this section for the approval~~
27 ~~of a timberland conversion permit are in addition to any other~~
28 ~~requirements established by law or regulation.~~